

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

RENÉ GRÄWE et al.

Serial No.: 10/532,036

Filed: April 21, 2005

For: USE OF POLYMER POWDERS THAT ARE REDISPERSIBLE IN
WATER AS BINDING AGENT FOR JOINTING SAND

Attorney Docket No.: WAS 0692 PUSA

Group Art Unit: 1796

Examiner: Kriellion Antionette Sanders

**RESPONSE TO NOTICE OF NON-COMPLIANT
APPEAL BRIEF UNDER 37 CFR § 41.37**

Mail Stop Appeal Brief- Patents
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:


In response to the Notification of Non-Compliant Appeal Brief dated January 23, 2009, kindly substitute the attached Section III, "Status of Claims" & Section V, "Summary of Claimed Subject Matter (pages 2 through 4) with the attached revised pages (2 through 4) which indicate that the status of claims 1 - 10 is "cancelled", as already indicated in the copy of the claims in the Claims Appendix, and to correct the reference to "claim 1" to "claim 11".

The Notice of Non-Compliant Appeal Brief also states that Section V is deficient, however, Applicants' attorney fails to find any material deficiency. There is but one independent claim, claim 11, and the full support from the specification for the claim is given. The claim is not a means plus function claim. As to the dependent claims, pages and line numbers have been added, although it is not known why these should be necessary, as the reference to the original claims (which are part of the specification), is clear and unambiguous.

The Commissioner is hereby authorized to charge any additional fees to our Deposit Account No. 02-3978. A duplicate of this Transmittal Letter is enclosed for that purpose.

Respectfully submitted,

RENÉ GRÄWE et al.

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Date: February 20, 2009

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Attachments: pages 2 - 4

III. STATUS OF CLAIMS

Claims 11 - 29 are pending in this application. Claims 1 - 10 have been cancelled. Claims 11 - 19, 22 - 25, and 27 - 29 have been rejected and are the subject of this appeal. There is no rejection of claims 20, 21, or 26.

IV. STATUS OF AMENDMENTS

A response after final rejection was filed on October 31, 2008, and has been accepted for entry. No claim amendments were made in the response.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed invention as set forth in claim 11 is directed to a process for jointing with sand, which involves forming a jointing composition by adding a binder to dry sand, the binder consisting essentially of one or more redispersible polymer powders, at least one of which is one of two functionalized redispersible polymer powders (a) and (b) (claim 1 as filed; specification page 1, lines 4 - 9, page 2, lines 7 - 11; page 8, line 38 to page 9, line 4), wherein the functionalized redispersible polymer powders (a) and (b) are:

- a) polyvinyl alcohol-stabilized copolymers comprising the polymerized product of at least one monomer selected from the group consisting of vinyl esters of straight-chain or branched alkylcarboxylic acids having 1 to 18 carbon atoms; (meth)acrylates of branched or straight-chain alcohols or diols having 1 to 18 carbon atoms; dienes; olefins; vinylaromatics; and vinyl halides, further containing from 0.1 to 20% by weight, based on the total weight of the copolymer, of one or more postcrosslinking comonomers selected from the group consisting of acrylamidoglycolic acid; methyl methacrylamidoglycolate; N-methylolacrylamide; -methylolmethacrylamide; allyl N-methylolcarbamate; alkyl ethers and

esters of N-methylolacrylamide, of N-methylolmethacrylamide, and of allyl N-methylolcarbamate; (meth)acryloyloxypropyltri(alkoxy)silanes; vinyltrialkoxysilanes; and vinylmethyldialkoxysilanes, and

[claim 1 as filed; specification, page 2, lines 13 - 30)

- b) polymers comprising the polymerized product of at least one monomer selected from the group consisting of vinyl esters of straight-chain or branched alkylcarboxylic acids having 1 to 18 carbon atoms; (meth)acrylates of branched or straight-chain alcohols or diols having 1 to 18 carbon atoms; dienes; olefins; vinylaromatics; and vinyl halides, said polymers stabilized with polymers comprising ethylenically unsaturated mono- or dicarboxylic acids or anhydrides thereof, having an acid content of from 50 to 99 mol%,

[claim 1 as filed, specification page 2, line 31, to page 3, line 3],

and sweeping the jointing composition in dry or moist form into joints [specification page 9, lines 1 - 3].

In a preferred embodiment as claimed in claim 12, a functionalized redispersible polymer powder (a) is employed [claim 2 as filed (page 12, lines 2 - 18)].

In another preferred embodiment as claimed in claim 15, a functionalized redispersible polymer powder (b) is employed [claim 5, as filed (page 13, lines 6 - 21)].

Claims 16 and 17 require the protective colloid of the polymers (b) to be a polyacrylic acid or polymethacrylic acid (claim 6 as filed (page 13, lines 22 - 25); specification page 6, line 21 to page 7, line 3).

Claims 18 and 19 require the protective colloid of the polymers (b) to be a copolymer containing acrylic acid, methacrylic acid, maleic acid, or maleic anhydride, optionally with other monomers copolymerizable therewith, and having a carboxylic acid group content of 80 - 99 mol%. (Claim 7 as filed (page 13, lines 26 - 32); page 6, line 21 to page 7, line 3, and page 6, line 33).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 11 - 14 and 23 - 25 stand rejected under 35 U.S.C. § 103(a) as obvious over Weitzel U.S. Patent 6,605,663 ("*Weitzel '663*").

B. Claims 11, 15 - 19, 22 - 23, and 27 - 29 stand rejected under 35 U.S.C. § 103(a) over Weitzel et al. U.S. Patent 6,262,167 ("*Weitzel '167*").

VII. ARGUMENT

The claimed invention is directed to jointing with sand. In the construction of streets, walkways, driveways, etc., where paving stones, bricks, or tiles are used, sand is commonly swept into the joints between the "pavers" to stabilize them against movement, for example tilting, etc., as the paved surfaces are used by pedestrian, bicycle, or vehicular traffic. In these applications, hydraulic binders such as Portland cement, aluminosilicate cement, etc., are generally not used, since the hard "joint" which results is subject to freeze/thaw cracking, and makes reworking of the paved surface difficult. However, when sand is used alone (sand including small aggregate, pigmentary solids or other finely ground substances in addition to the major silica or limestone component), the sand may be gradually washed away, by rainfall, for